



**UNITED STATES DEPARTMENT OF COMMERCE  
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SERIAL NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
07/431,533	11/03/89	MORTON	D P318462

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18N1/0805

DUBRULE EXAMINER	
ART UNIT	PAPER NUMBER
1813	

DATE MAILED:

08/05/94

Please find below a communication from the EXAMINER in charge of this application.

Commissioner of Patents.

*See the attached letter*

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Acknowledgment is hereby made of receipt and entry of amendment D, paper No. 31, on 6/24/94.

Applicants have attempted to incorporate the examiner's suggestion by way of this amendment, but apparently have not understood what form the claims should take since the inventions now claimed are not drawn to the 90kDa subunit, but rather to the holoantigen, said holoantigen not comprising the originally elected invention.

As the prosecution history plainly establishes, Applicants have been prosecuting claims drawn to the 90kDa subunit, and uses thereof as immunogens or vaccines. In some instances, this subunit was claimed as being associated with certain cell types.

The claims are now drawn to the holoantigen. As pointed out in the previous 30-day letter (paper #30), this holoantigen is distinct from the subunit examined by the examiner. Applicants should limit the claims to the subunit elected, or alternatively refile the application if they wish to prosecute an invention other than the one elected in paper #6.

Accordingly, the requirement made in the last paper shall be made again herein, in an attempt to give Applicants an opportunity to correct the claims, or alternatively file some form of continuing application.

The amendment filed on 6/24/94 cancelling all claims drawn to the elected invention and presenting only claims drawn to a non-elected invention is non-responsive (M.P.E.P. § 821.03). The remaining claims are not readable on the elected invention because amended claim 47, as well as all other remaining dependent and independent claims are drawn to an antigenic composition having a molecular weight of 590-620kDa, from which a subunit of 90-100kDa can be derived. The originally examined invention was directed to the 90-100 kDa subunit, and compositions containing it, as well as methods using it. Clearly, the amended and newly added claims would require a separate search. Moreover, the holoantigen is distinct from the subunit because it can be used to generate different subunits, and each of these subunits is taught to be useful for methods of vaccination and diagnosis. Therefore, the holoantigen is related to the 90-100kDa antigen as product and process of using the product. Applicant is given a one (1) month time limit or until the expiration of the response period set in the last Office action, whichever is longer, to complete the response. No extension of this time limit will be granted under either 37 C.F.R. § 1.136(a) or (b) but the period for response set in the last Office action may be extended up to a maximum of six months.

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Papers related to this application may be submitted to Group 180 by facsimile transmission. Papers should be faxed to Group 180 via the PTO Fax Center located in Crystal Mall 1. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989).

The CM-1 Fax Center number is (703) 305-3014

Any inquiry concerning this communication or earlier communications from the examiner should be directed to examiner Chris Dubrule whose telephone number is (703) 308-0708. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0196.

CJD



  
MICHAEL P. WOODWARD  
PATENT EXAMINER  
GROUP 1800